



INTERIOR BOARD OF INDIAN APPEALS

Gary Colbert v. Muskogee Area Director, Bureau of Indian Affairs

18 IBIA 92 (12/22/1989)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

GARY COLBERT

v.

MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-84-A

Decided December 22, 1989

Appeal from a denial of a request to approve a legal assistant training program under the adult vocational training program.

Affirmed.

1. Indians: Education and Training: Vocational Training-- Indians:
Financial Matters: Financial Assistance

Under 25 CFR 27.1(h)(3) and 27.2, participation in the Bureau of Indian Affairs' adult vocational training program is limited to full-time institutional training, i.e., a course load of 12 semester hours or its equivalent.

APPEARANCES: Gary Colbert, pro se; Delton R. Cox, Acting Muskogee Area Education Programs Administrator, Bureau of Indian Affairs, Muskogee, Oklahoma, for appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Gary Colbert seeks review of a July 6, 1989, decision of the Muskogee Area Director, Bureau of Indian Affairs (BIA; appellee), concerning approval of a legal assistant training program under the adult vocational training (AVT) program. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

Apparently on or about July 22, 1988, appellant, a member of the Chickasaw Tribe (tribe), requested financial assistance to attend a legal assistant training program at the Oklahoma University Law Center (university). Appellant's request was made to the tribe, which administers the AVT program for its members under authority of a contract under the Indian Self-Determination and Education Assistance Act, P.L. 93-638, as amended, 25 U.S.C. §§ 450-450n (1982 and Supps.) (P.L. 638). Appellant was initially found eligible to receive assistance under this program and the university was contacted concerning payment of his costs and expenses.

In September 1988, the tribal Employment and Training Director (Director) became aware through conversations with appellant that he was attending classes only on Saturdays, on a bi-weekly or monthly basis. The Director contacted the Muskogee Area Office (Area Office) for information concerning whether or not appellant qualified for assistance under the AVT program because it appeared that he was not attending classes on a full-time basis, as she believed was required by regulations in 25 CFR 27.1(h) 1/ and 27.2. 2/

The Area Office confirmed the Director's understanding that participants in the AVT program must be full-time students. 3/ Accordingly, the Director informed appellant that his financial assistance would be discontinued.

Appellant apparently sought review of this determination under appeal procedures established by the tribe as part of its P.L. 638 contract. By letter dated June 1, 1989, he also sought a determination from appellee that the university's legal assistant program qualified as a full-time program under the regulations.

By letter dated July 6, 1989, appellee responded to appellant's request to approve the university's legal assistant program for AVT program funds. Appellee noted that the problem with approval of the program was the full-time requirement. He indicated that, in considering appellant's request, the Area Office had consulted with the Veterans Administration, which has a definition of "full-time" that is the same as BIA's. Appellee concluded after reviewing the legal assistant program description and speaking with a university official involved with the program that the course was part-time

1/ Section 27.1(h) provides:

"Full time' institutional training is:

"(1) An institutional trade or technical course offered on a clock-hour basis below the college level, involving shop practices as an integral part thereof when a minimum of thirty (30) hours per week of attendance is required with not more than 2½ hours of rest periods per week allowed.

"(2) An institutional vocational course offered on a clock-hour basis below the college level in which theoretical or classroom instruction predominates when a minimum of twenty-five (25) hours per week net of instruction is required, or

"(3) An institutional undergraduate vocational course offered by a college or university on a quarter or semester-hour basis when a minimum of twelve (12) semester credit hours or its equivalent is required."

2/ Section 27.2 provides in pertinent part: "The [AVT] program provides for full time institutional training in any vocational or trade school."

3/ Under regulations in 25 CFR 271.4(h), P.L. 638 contractors

"shall use the existing [BIA] eligibility criteria in operating all or parts of a [BIA] program under a contract under this part unless a waiver is obtained from the Commissioner. The Commissioner may not waive eligibility criteria established by statute. The Commissioner may waive eligibility criteria established by regulation in 25 CFR Chapter I."

and was primarily designed for students who were employed full-time and were seeking to upgrade their professional status. Appellee concluded that the university's legal assistant program could not be approved as a full-time program under the AVT program regulations. He concluded at page 2:

It is unfortunate that at this time the AVT Program does not provide assistance for part-time training. Several years ago, there was some discussion for including this option in the regulatory authority but feedback from our field staff indicated the demand for full-time assistance was so great that financial assistance for all of the eligible participants could not be satisfied. There would be no advantage to broadening the services.

The Board received appellant's notice of appeal from this decision on July 31, 1989. Both appellant and appellee filed briefs in this appeal.

Discussion and Conclusions

The AVT program is administered by BIA under authority of 25 U.S.C. § 309 (1982), which provides:

In order to help adult Indians who reside on or near Indian reservations to obtain reasonable and satisfactory employment, the Secretary of the Interior is authorized to undertake a program of vocational training that provides for vocational counseling or guidance, institutional training in any recognized vocation or trade, apprenticeship, and on the job training, for periods that do not exceed twenty-four months, and, for nurses' training, for periods that do not exceed thirty-six months, transportation to the place of training, and subsistence during the course of training. The program shall be available primarily to Indians who are not less than eighteen and not more than thirty-five years of age and who reside on or near an Indian reservation, and the program shall be conducted under such rules and regulations as the Secretary may prescribe. For the purposes of this program the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, or with any private school which has a recognized reputation in the field of vocational education and has successfully obtained employment for its graduates in their respective fields of training, or with any corporation or association which has an existing apprenticeship or on-the-job training program which is recognized by industry and labor as leading to skilled employment, or with any school of nursing offering a three-year course of study leading to a diploma in nursing which is accredited by a recognized body or bodies approved for such purpose by the Secretary.

Implementing regulations are found in 25 CFR Part 27.

Appellant argues that the university's legal assistant program should be approved under the AVT program. In essence, appellant contends that

BIA should approve any legal assistant program that is accredited by the American Bar Association (ABA); the university should have full authority to determine whether 6 "legal course hours" are equivalent to 12 semester hours; and BIA violated 25 U.S.C. § 309 (1982), certain named treaties, his civil rights, and the Federal trust responsibility by denying him and other Indians the opportunity to participate in legal assistant programs and thereby learn skills that would lead to gainful employment. Appellant notes that employment opportunities in the paralegal occupations are expected to increase dramatically in the next few years.

[1] Appellant's initial argument, that any ABA-accredited legal assistant program should be approved under the AVT program, cannot be accommodated under the AVT regulations. Under 25 CFR 27.2, participation in the AVT program is clearly and explicitly limited to full-time institutional training. This is further defined in 25 CFR 27.1(h)(3) to mean a course load of 12 semester hours or its equivalent. Contrary to appellant's contention, the Secretary was granted authority in 25 U.S.C. § 309 (1982) to promulgate rules and regulations necessary for the implementation of the AVT program. In implementing the program, the Secretary has observed that the amount of money appropriated by Congress for the program does not meet the needs of individuals who are seeking assistance for full-time training programs. It is a reasonable exercise of his discretion in implementing the program to limit its availability to full-time students. As the Board recently noted concerning the Core Management grant program, when the funds available for a program are less than the amounts requested under that program, BIA must determine how best to allocate those limited resources. The allocation determination will be upheld when it is reasonable and objective. Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 52 (1989). ^{4/}

The ABA, in contrast to BIA, need not be concerned about whether programs it accredits are full- or part-time. It is accrediting the program, not the format. The fact that a program has received ABA accreditation, or that any other program has received accreditation from a recognized vocational association, does not automatically mean that the program is qualified under the AVT program.

Appellant argues that the university, rather than BIA, should determine whether 6 "legal course credits" are equivalent to 12 semester hours or its equivalent as required by 25 CFR 27.1(h)(3). Appellee correctly states that the "or its equivalent" language in that regulation is intended to cover the situation of institutions which are on the quarter system. It

^{4/} Furthermore, the Board lacks authority to declare duly promulgated Departmental regulations invalid. See Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation v. Sacramento Area Director, 17 IBIA 141, 143 (1989); Joint Board of Control for the Flathead, Mission and Jocko Irrigation Districts v. Portland Area Director, 17 IBIA 65, 70 (1989); Northern Natural Gas v. Minneapolis Area Director, 15 IBIA 124, 126 (1987), and cases cited therein.

is not intended to take the difficulty of the course or other similar factors into consideration. The institution offering a course considers such factors when it assigns the credit hours to the course. In this case, the university has determined the semester hours for each course, and those hours are indicated in the course information pamphlet it issued. The information disseminated by the university indicates that 6 "legal course credits" are equal to 6 semester hours.

Appellant argues that BIA has violated statutes, treaties, his civil rights, and its trust responsibility in denying him and other Indians the opportunity to participate in legal assistant training programs. This allegation is without merit. Appellant was specifically informed of the availability of full-time legal assistant training programs at two other institutions in Oklahoma. He was told that these programs qualify for financial assistance under the AVT program. Legal assistant training is available to appellant; it is just not available on the particular terms that he demands.

The Board concludes that appellee correctly determined that the university's legal assistant program was not a full-time training program within the meaning of 25 CFR Part 27 and could not be approved as a full-time program.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the July 6, 1989, decision of the Muskogee Area Director is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge